STATE OF MICHIGAN

COURT OF APPEALS

AUTO OWNERS INSURANCE COMPANY,

Plaintiff-Appellee,

v

LONG'S TRI-COUNTY MOBILE HOME, INC.,

Defendant-Appellant,

and

JEFF SCOTT and LAURA SCOTT,

Defendants.

UNPUBLISHED
June 28, 2005

No. 252580
St. Clair Circuit Court
LC No. 02-001468-CK

Before: Owens, P.J., and Cavanagh and Neff, JJ.

PER CURIAM.

Defendant Long's Tri-County Mobile Home, Inc., appeals as of right an order granting declaratory judgment in favor of plaintiff. We affirm.

Defendant argues that the trial court erred in granting judgment in favor of plaintiff and holding that defendant's claim was not a covered loss under the terms of the commercial general liability insurance policy it secured with plaintiff. We disagree.

Here, both parties moved for summary disposition according to MCR 2.116(C)(10). A motion under MCR 2.116(C)(10) tests the factual support of a plaintiff's claim. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). The construction and interpretation of an insurance policy and whether an ambiguity remains for the factfinder are questions of law that are reviewed de novo on appeal. *Henderson v State Farm Fire & Cas Co*, 460 Mich 348, 353; 596 NW2d 190 (1999).

Defendant's claim is not an insurable loss because it is not an "occurrence" as defined by the policy of insurance. "Interpretation of an insurance policy ultimately requires a two-step inquiry: first, a determination of coverage according to the general insurance agreement and, second, a decision regarding whether an exclusion applies to negate coverage. This Court has

held that an insurance policy provision is valid 'as long as it is clear, unambiguous and not in contravention of public policy.'" *Auto-Owners v Harrington,* 455 Mich 377, 382; 565 NW2d 839 (1997) (citations omitted). Resolution of the first issue before the Court turns on our interpretation and application of the definition of "occurrence" in the "insuring agreement" section of the policy.

"An insurance policy is an agreement between parties that a court interprets 'much the same as any other contract' to best effectuate the intent of the parties and the clear, unambiguous language of the policy." *Id.* at 381, quoting *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1992). Thus, "the court looks to the contract as a whole and gives meaning to all its terms." *Harrington, supra*. An unambiguous contract must be construed according to its plain and ordinary meaning. *St Paul Fire & Marine Ins Co v Ingall*, 228 Mich App 101, 107; 577 NW2d 188 (1998). It is the insured's burden to prove that coverage exists. *Heniser v Frankenmuth Mut Ins Co*, 449 Mich 155, 161 n 6; 534 NW2d 502 (1995). Any doubt regarding insurance coverage must be resolved in the insured's favor. *American Bumper & Mfg Co v Hartford Fire Ins Co*, 452 Mich 440, 448; 550 NW2d 475 (1996). If the insurance contract contains definitions, they must be used when interpreting the policy language. *Cavalier Mfg Co v Employers Ins of Wausau (On Remand)*, 222 Mich App 89, 94; 564 NW2d 68 (1997).

The policy in question is one for casualty loss which provides coverage for "property damage" that was "caused by an 'occurrence.'" "Occurrence" is defined by policy as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions." While the term accident is not defined in the policy, the Supreme Court has defined an accident as "an undesigned contingency, a casualty, a happening by chance, something out of the usual course of things, unusual, fortuitous, not anticipated, and not naturally to be expected." *Frankenmuth Mutual Ins Co v Masters*, 460 Mich 105, 114; 595 NW2d 832 (1999).

The trial court noted that the damages in this case were caused by the faulty backfilling performed by a subcontractor hired by defendant. The subcontractor's faulty work caused the basement walls of the manufactured home sold and delivered by defendant to crack and settle. An arbitrator found defendant responsible as the general contractor for the installation of the manufactured home. In ruling from the bench in favor of plaintiff the Court relied on *Hawkeye-Security Insurance Company v Vector Construction,* 185 Mich App 369; 460 NW2d 329 (1990), for the proposition that the defective workmanship of the subcontractor was not an unforeseeable accident and therefore could not be considered an occurrence under plaintiff's policy.

In *Vector*, the insured purchased cement from a third-party, which it then used to perform all the concrete work in an improvement project at a water treatment plant. *Id.* at 371. The owner of the plant discovered that the concrete was defective, and to remedy the problem, the insured had to remove the defective concrete and replace it with concrete that met the project's standards. *Id.* at 371-372. When the insured submitted a claim for the costs it incurred for the repairs, the insurer denied its claim on the basis that there had been no "occurrence" under the insurance policy. *Id.* at 372. Similar to the instant case, the policy defined an "occurrence" as "an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured . . . ." *Id.* at 373. The trial court granted the insurer's motion for summary disposition. *Id.* at 372.

On appeal, this Court found *Bundy Tubing Co v Royal Indemnity Co,* 298 F2d 151 (CA 6, 1962) to be persuasive authority, and interpreted that case to mean that "an insurer must defend and may become obligated to indemnify an insured under a general liability policy of insurance that covers losses caused by 'accidents' where the insured's faulty work product *damages the property of others*." *Vector, supra* at 377 (emphasis added). Thus, this Court held that there had been no "occurrence" within the meaning of the policy because the defective concrete damaged nothing but the insured's work product. *Id.* at 378.

In *Radenbaugh v Farm Bureau Gen Ins Co,* 240 Mich App 134; 610 NW2d 272 (2000), the insured brought an action for breach of a commercial general liability policy, and the defendant insurer and the plaintiff insureds cross-appealed orders issued on cross-motions for summary disposition. *Id.* at 136-137. The underlying action in *Radenbaugh* arose out of the sale of a double-wide mobile home by the insured. *Id.* at 136. The purchasers alleged that the insured provided erroneous schematics and instructions to contractors hired by the purchasers of the home for the construction of the home's basement foundation and erection of the home on its basement, which caused damage to the home and basement. *Id.* Similar to the instant case, the insured sought a defense and indemnification under its insurance policy, which the insurer refused based on policy language substantially similar to the instant case. *Id.* at 137, 141.

Radenbaugh looked to *Vector* and *Bundy,* and noted, "*Bundy* and *Vector* can be reconciled by focusing on the property damage at issue in each case." *Id.* at 147. The Court continued, holding, "these cases stand for the proposition that when an insured's defective workmanship results in damages to the property of others, an 'accident' exists within the meaning of the standard comprehensive liability policy." *Id.* at 147. The Court held:

> Consistent with *Bundy* and contrary to the facts in *Vector,* the underlying action alleged more than damage to the insured's own product. In particular, it was alleged that because of plaintiffs' defective instructions to the basement contractor, Leelanau Redi-Mix, the basement of the mobile home was improperly constructed and the mobile home was incorrectly erected. As a result of defendant's faulty instructions, the basement was rendered unusable because "water is seeping into and condensing on basement walls, constituting a threat of rot, causing mildew and mold and other health hazards." [*Radenbaugh, supra at* 144-145.]

Thus, the rule is clear: where an insured cannot show damage to anything more than his defective product, there is no "occurrence" under the terms of the policy. Here, the damaged portions of the Scotts' property – the manufactured home - that needed to be repaired, replaced or restored as a result of defective workmanship by defendant's subcontractor was limited to defendant's own product (the basement and manufactured home). The record is devoid of any evidence that there was any damage to anything other than the product manufactured, sold and installed by defendant. The trial court correctly granted plaintiff's motion for summary disposition based on its reading that defendant's claim was not an "occurrence" under the terms of the policy.

The trial court went on to hold that even if the damages sustained were the result of an occurrence under the policy, two policy provisions clearly exclude coverage. While it is unnecessary for us to address or decide the applicability of the exclusions to coverage, we note that we agree with the trial court's ruling in this regard.

Affirmed.

/s/ Donald S. Owens
/s/ Mark J. Cavanagh
/s/ Janet T. Neff